

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR401
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
HECTOR NUNEZ-MARTINEZ,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report (“PSR”), the parties’ objections thereto (Filing Nos. 38, 41), and the Defendant’s motion for downward departure or variance and supporting brief (Filing Nos. 39, 40)¹. See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties have objected to the quantity of controlled substance attributable to the Defendant in ¶ 35 and the base offense level 34. The plea agreement recommends a base offense level of 32. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 32.

The Defendant's motion for downward departure or variance will be heard at sentencing.

¹The Court notes that while the Defendant may request a departure pursuant to 18 U.S.C. § 3553 and U.S.S.G. § 4A1.3, the request that U.S.S.G. § 5K2.0 be considered is inconsistent with the plea agreement. (Filing No. 32, ¶ 10c.)

IT IS ORDERED:

1. The Court's tentative findings are that the parties' objections to the Presentence Investigation Report (Filing Nos. 38, 41) are granted;
2. The Defendant's motion for downward departure or variance (Filing No. 39) will be heard at sentencing;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of July, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge